

## OPERATION OF THE ARMY

MAY 20, 1926.—Committed to the Committee of the Whole House and ordered to be printed

Mr. WOLVERTON, from the Committee on War Claims, submitted the following

### REPORT

[To accompany H. R. 10456]

The Committee on War Claims, to whom was referred the bill (H. R. 10456) for the payment of claims for pay, personal injuries, loss of property, and other purposes incident to the operation of the Army, having considered the same, report thereon with a recommendation that it do pass without amendment.

The facts are fully set forth in a letter from the Secretary of War addressed to the Speaker, House of Representatives, under date of February 23, 1926, which is appended hereto and made a part of this report.

WAR DEPARTMENT,  
Washington, February 23, 1926.

The SPEAKER,  
*House of Representatives.*

SIR: Transmitted herewith is a draft of a bill for the relief of certain persons, hereinafter named, for the payment of the amounts stated therein to such persons on account of pay due, personal injuries, loss of property, and for other purposes arising incident to the operation of the Army.

It is recommended, for the reasons hereinafter given, in respect to each claim, that appropriate relief be provided. The facts bearing on each of the claims included in the inclosed draft of bill are as follows:

The first item, \$495.42 to Johannes Weissing, care of German Embassy, Washington, D. C., is for pay due while interned at Fort McPherson, Ga., and serving as a male nurse to German prisoners of war for the period from May 1, 1918, to June 24, 1919—13 months and 24 days—at \$35.90 per month, the pay of a hospital apprentice, second class, United States Navy, which is the nearest corresponding grade to the claimant's rating—Sanitaetsmaat—in the German Navy,

The claim of Johannes Weissing, a member of the German sanitary personnel, captured at Guam April 7, 1917, while serving on the S. M. S. *Cormoran*, and later interned at Fort McPherson, Ga., has been the subject of an exchange of correspondence between the German Embassy, this city and the State Department. In connection with that correspondence the War Department, in a letter

to the State Department, dated September 27, 1923, adhering to a previous decision disallowing the claim of this former prisoner of war, stated, in part, as follows:

"It appears that the German Embassy has requested a reconsideration of the action previously taken in the case of one Johannes Weissing, who presented a claim for pay while interned in charge of the United States Army and serving as a male nurse to German prisoners of war at Fort McPherson, Ga. This prisoner was paid at the rate of \$35.90 per month from June 10, 1917, to April 30, 1918. On May 14, 1918, the War Department directed the commandant war prison barracks, Fort McPherson, to make no further payments to any of the sanitary personnel at those barracks pending the conclusion of an agreement with Germany on this subject. No payments were made to Weissing after April 30, 1918."

In an opinion in respect to this matter dated April 7, 1923, the Judge Advocate General of the Army stated, in part, as follows:

"2. In an exhaustive and carefully considered opinion, one of my predecessors pointed out the difference between pay due an officer prisoner of war and pay due a member of captured sanitary personnel. In the former case the captor state simply pays the officer on behalf of his own government, and because, from the nature of the situation, his own state can not pay him, and upon the conclusion of peace, the captor state is entitled to reimbursement. Upon the return of the captured officer to his own country, that reason no longer exists, and hence the officer is without further claim against the captor state, even for back pay. But with the members of the sanitary personnel the situation is different. Upon their capture it is the duty of the captor to return them promptly but in case of necessity, i. e., his necessity, he may detain them, not as prisoners of war, but to perform their usual duties; and during the time they are thus detained the captor must compensate them for their services without the right to reimbursement from their own state. Their claim is individual and is not lost by their return to their own country." (Ops. J. A. G. 383.6, June 30, 1921.)

But while recognizing the distinction between claims of captured officers and claims of members of sanitary personnel, the opinion cited proceeds as follows:

"In saying that claims to payment of officer prisoners of war are national and those for the payment of sanitary personnel are individual claims, I do not mean to be understood as implying that the German Government controls the former but not the latter. On the contrary it is quite as competent, in my opinion, for the German Government by international agreement to dispose of the individual claims of its nationals as it is to dispose of its purely national claims. This was done by the United States in the treaty of peace with Spain in 1898 \* \* \*."

This is precisely what has now taken place in making peace with Germany. By Article II of the Treaty of Peace between the United States and Germany, proclaimed on November 14, 1921, the rights and benefits stipulated in Part XV, *inter alia*, of the treaty of Versailles, shall accrue to the United States. By article 439 of the treaty of Versailles, being a provision contained in Part XV, *supra*, it was provided as follows:

"Without prejudice to the provisions of the present treaty Germany undertakes not to put forward directly or indirectly against any allied or associated power, signatory of the present treaty, including those which, without having declared war, have broken off diplomatic relations with the German Empire, any pecuniary claim based on events which occurred at any time before the coming into force of the present treaty.

"The present stipulation will bar completely and finally all claims of this nature, which will be thenceforward extinguished, whoever may be the parties in interest."

Quoting from a recent opinion of this office:

"That a government entitled to assert a claim against another government may, without consideration for the private interest of its nationals, release and extinguish such claim by treaty, agreement, or other negotiations with the government against whom such claim is being pressed, and with it the claims of its nationals, has been expressly held by the Supreme Court of the United States in the case of the *Alabama* claims (*Williams v. Heard*, 140 U. S. 529, 537) and by the House of Lords in considering the same class of claims (*Burnand v. Rodocanachi*, 7 App. Cas. 333, 343), and the proposition is fully discussed in an exhaustive opinion of this office in the case of one Georg Lindelof. (Ops. J. A. G. 383.7, July 20, 1920.) The language of article 439 is so broad and sweeping that I have no doubt that it would cover a claim such as is here presented and, in my opinion, is sufficient to estop this claimant from now making demand on the

United States for the sum deducted for his maintenance." (Ops. J. A. G. 383.6, Jan. 29, 1923.)

While this office, prior to the conclusion of the treaty of peace with Germany, felt at liberty to recommend payment in a few proper cases of the purely individual claims of sanitary personnel, the situation since the treaty has become so different that I can not regard these cases as precedents. Article 439, which is to be deemed incorporated by reference in our individual treaty with Germany, in providing that such claims are "extinguished" seems to put it beyond the power of an administrative officer to revive such a claim. The fact that Weissing was properly identified as a member of the sanitary personnel during the period of his internment and that he made claim for pay during such period do not seem facts which can affect the application of the provision of the treaty of peace with Germany set out above. As the foregoing statements and conclusions fully present the position of the department in regard to this matter, the decision previously taken in disallowing the claim of Johannes Weissing is adhered to.

In further reference to the matter the State Department, under date of August 25, 1924, wrote as follows:

"I have the honor to refer to your letter of September 27, 1923, in relation to the payment of salary alleged to have been due to the German citizen, Johannes Weissing, a former prisoner of war and a member of the German sanitary personnel, in which you advise me that in view of the provisions of article 439 of the treaty of Versailles, the rights and advantages of which are accorded to the United States by the treaty of August 25, 1921, it is impossible to give favorable consideration to the claim of Johannes Weissing.

"In reply I have the honor to inquire whether, in view of the special nature of this case, you consider that it would be appropriate to recommend to Congress the payment of the claim as an act of grace."

On January 17, 1925, the War Department, upon further consideration, advised the State Department, in part, as follows:

"The United States is obligated to pay the amounts due captured enemy medical personnel during the period of detention under article 13, Geneva convention, ratified January 2, 1907. This article provides, in respect to enemy medical personnel, that, while they remain in his power, the captor state will secure to such personnel the same pay and allowances to which persons of the same grade in his army are entitled. In the department's letter of July 22, 1921, it was stated, in regard to the claims of members of the sanitary personnel, that this Government has always recognized its liability for payment of salary to enemy sanitary personnel in its hands, and during the late war paid captured members of the German sanitary personnel the pay and allowances to which men of the same grade in the American Army are entitled.

"The disallowance of the claim of Johannes Weissing, as confirmed in the department's letter of September 27, 1923, although considered a claim of the individual, was based upon article 439 of the treaty of Versailles, the rights and advantages of which are accorded to the United States in the treaty establishing friendly relations with Germany, signed at Berlin August 25, 1921. While the claim is regarded as extinguished under the article of the treaty cited, it is believed, nevertheless, that it should be paid in view of the obligations assumed by the United States to pay enemy medical personnel during detention under article 13 of the Geneva Convention. Therefore, since the War Department is without authority to pay the claim, a recommendation to Congress for its payment as an act of grace is considered appropriate and steps will accordingly be taken to present the matter to Congress for consideration."

The second item, \$3,000, indemnity to Louise A. Alleyne, care of British Embassy, Washington, D. C., residing at No. 552 Red Tank, Panama Canal Zone, widow of Rev. Sidney H. Alleyne, colored, formerly pastor of the Free Methodist Church, Red Tank, Panama Canal Zone, injured in collision with a tractor owned by the United States and operated by the Coast Artillery Corps of the Army, who died as a result of his injuries.

According to the records of the department bearing on the accident it appears that the Rev. Sidney H. Alleyne, colored, a native of the Barbados and a British subject, at that time pastor of the Free Methodist Church, Red Tank, Panama Canal Zone, while proceeding from Panama City to Red Tank, Panama Canal Zone, on April 13, 1923, at about 1.30 a. m., via the Gaillard Highway, riding a bicycle equipped with a Briggs-Stratton motor wheel attachment, collided in the darkness with a Holt 10-ton caterpillar tractor, property of the United States, at a point about 200 yards north of the Cardenas River bridge and



opposite the corral at Fort Clayton, Panama Canal Zone. The tractor, which was being moved from Corozal to Miraflores and had been parked on account of engine trouble on the left or west side of the road against the curb, was without lights. A street light located at a distance of about 50 feet from the tractor was not burning. It appears further that, as the tractor was parked near the street light, the placing of a parking light on the tractor was deemed unnecessary by the officer in charge. All street lights at Fort Clayton, however, are put out at 11 p. m., and at the time of the accident, as stated, the light near the tractor was not burning. Section 13 of the traffic laws and regulations, Panama Canal Zone, provides that vehicles meeting and passing shall keep to the left. Traffic regulations in force at that time did not prohibit the parking of vehicles without lights along the Gaillard Highway between the southern and northern limits of Fort Clayton between the hours of 6 p. m. and 6 a. m. Paragraph 3(b), Section VIII, of the traffic regulations, however, amended April 24, 1923, now prohibit the parking of vehicles without lights along the entire extent of that highway between 6 p. m. and 6 a. m. Mr. Alleyne was injured in the collision, sustaining a fractured larynx, which caused his death on April 27, 1923.

A coroner's jury, impaneled by Capt. Maurenus Peterson, deputy coroner, to inquire into and determine the cause of death of Sidney H. Alleyne, found the facts substantially as related above. The concluding part of the verdict reads as follows:

"We further find that the tractor was being moved from Corozal to Miraflores on the day before the accident, but on account of engine trouble it had to be left on the road; that the traffic regulations did not then require a light on a parked vehicle at that point, but we are of the opinion that, considering the size and construction of the tractor and the fact that for the greater portion of the night the street lights would have been off and the place in darkness, it would have been prudent to have placed a light on the tractor, that there is, therefore, a moral responsibility for the accident on the persons who left it without light.

"Given at Ancon, Canal Zone, this 28th day of April, A. D. 1923."

A claim for compensation presented on behalf of the widow by the Rev. B. L. Beegle, superintendent, Free Methodist Church, Ancon, Canal Zone, was disallowed by the department by letter dated May 3, 1924, on the ground that no responsibility rested with the Government for the tortious acts of its agents. Mr. Beegle was also informed that the claimant's only means of pecuniary relief available was a civil suit against the individuals concerned or appropriate legislative relief. Later the British Embassy, in a note to the Department of State dated July 23, 1924, called attention to the matter and inquired as to the decision of the competent authorities with regard to Mrs. Alleyne's claim. On the subject of the claim the following communications were exchanged between the State and War Departments:

DEPARTMENT OF STATE,  
Washington, November 10, 1924.

The SECRETARY OF WAR.

SIR: I have the honor to acknowledge the receipt of your letter dated September 15, 1924, concerning the claim of Mrs. Alleyne, widow of the Rev. S. H. Alleyne, a British subject, who died as a result of injuries received while riding a motor cycle at Fort Clayton, Panama Canal Zone, by collision with an Army tractor. You set forth the finding of fact and the verdict rendered by the coroner's jury impaneled to inquire into and determine the cause of the death of the Reverend Alleyne, which contains the statement that "it would have been prudent to have placed a light on the tractor; that there is, therefore, a moral responsibility for the accident on the persons who left it without light." You state that you informed the Rev. B. L. Beegle, superintendent, Free Methodist Church, Ancon, Panama Canal Zone, that responsibility for the accident could not legally rest upon the United States as it is well settled that the Government is not pecuniarily responsible for the tortious acts of its officers or agents, and that the only means of pecuniary relief available was a civil suit against the persons responsible or appropriate legislative relief.

It would seem from the foregoing statements and from further facts stated in your letter of September 15, 1924, that although this Government may not legally be responsible for the death of the Reverend Alleyne, it is morally responsible and that suitable compensation should be paid to Mrs. Alleyne and her children. In the circumstances I should be pleased if you would be so good as to inform me whether you will be disposed to recommend to the Congress of the United States that a suitable amount be appropriated as an act of grace and without reference

to the legal liability of the United States as compensation for Mrs. Alleyne and her children for the death of the Reverend Alleyne. I should be pleased if you would also state what amount you deem to be suitable compensation in this case.

I have the honor to be, sir,  
Your obedient servant,

CHARLES E. HUGHES.

WAR DEPARTMENT,  
Washington, November 18, 1924.

THE SECRETARY OF STATE.

MY DEAR MR. SECRETARY: I have your letter of November 10, 1924, concerning the claim of Mrs. Alleyne, widow of the Rev. S. H. Alleyne, a British subject, who died as a result of injuries received while riding a motor cycle at Fort Clayton, Panama Canal Zone, by collision with an Army tractor, which at the time of the accident was at the side of the roadway without lights.

Note has been taken of the observations contained in your letter to the effect that from the facts in the case, although this Government may not legally be responsible for the death of the Reverend Alleyne, it is morally responsible, and that suitable compensation should be paid to Mrs. Alleyne and her children. Note is also taken of your request to be informed in the circumstances whether I will be disposed to recommend to the Congress of the United States that a suitable amount be appropriated as an act of grace and without reference to the legal liability of the United States as compensation for Mrs. Alleyne and her children for the death of the Reverend Alleyne. You also request information as to what amount is deemed to be suitable compensation in this case.

While the customary procedure in a similar case arising in the United States would be for the claimant to present the matter to Congress, through a Member of Congress, for the claimant's district, or United States Senator, I have no objection to recommending the appropriation of a suitable amount in this instance, as suggested, in view of the fact that the claimant is a national of another country. However, as the department is without information as to the Reverend Alleyne's earnings per annum and the amount ordinarily contributed by him toward the support of his family, also as to the name, sex, and age of each of claimant's seven children, it has not been possible to determine the amount that might be recommended to Congress. It is therefore requested that this information be obtained for this department, together with a statement showing the amount paid for hospital and medical attendance and for funeral expenses.

When the information requested is available, the amount considered a suitable compensation will be determined and consideration given to the matter of presenting the claim to the Congress.

Sincerely yours,

JOHN W. WEEKS, *Secretary of War.*

The information furnished in connection with the request made in the department's letter of November 18, 1924, was as follows:

(1) Mr. Alleyne's income as pastor of Red Tank Free Methodist Church was \$900 (United States currency). He was also provided with free quarters for himself and family. He contributed about \$60 per month, exclusive of his own expenses, toward the support of his family.

(2) The claimant has seven children—three girls, aged 19, 11, and 7 years, respectively, and four boys aged 18, 12, 5, and 4 years, respectively. One boy lives with relatives in Barbados and claimant contributes \$5 per month for his maintenance. Another boy—the eldest—is employed as messenger at \$35 per month.

(3) The hospital and medical attendance of deceased were furnished by the Army. The funeral expenses—\$55—were paid in part by the church authorities and friends, and the balance, \$20, was paid by claimant.

Upon receipt of the above information the State Department was advised, in a letter dated March 21, 1925, in part, as follows:

"The department will take steps at an early date to recommend to the Congress the appropriation of the sum of \$3,000 to settle the claim of Mrs. Alleyne, as an act of grace, and urge that the matter be given consideration early in the next session. The sum to be recommended for appropriation is the approximate amount that would have been allowed in lump-sum settlement to a widow, with four or more children, of an injured civilian employee of the Government dying as a result of injuries received in the performance of duty, under sections 10 (c) and 14 of the act approved September 7, 1916 (39 Stat. 742). The Reverend Alleyne,

it is reported, received a salary of \$900 per annum. Section 10 (c) of the act approved September 7, 1916, provides that the widow, upon the death of an injured employee, would receive 35 per cent of the monthly salary, and each minor child under 18 years of age 10 per cent, but not to exceed a total of 66 $\frac{2}{3}$  per cent for such widow and children. Section 14 of that act provides, in cases where lump-sum settlements are made to the widow, that such lump sums shall not exceed 60 months' compensation. The sum to be recommended, therefore, is two-thirds of the late Reverend Alleyne's annual salary for five years."

On June 10, 1925, by note of that date, the British Embassy informed the State Department that Mrs. Alleyne had signified her willingness to accept the sum of \$3,000 in full and final settlement of her claim.

The third and fourth items, amounting to \$360 to Army Field Clerk John K. Smyth (\$300) and Warrant Officer Edward K. Powell (\$60) are for the loss by misappropriation by an employee of certain registered letters and contents after delivery of such letters to Army Post Office No. 944 at Antwerp, Belgium.

The facts in these cases appear to be that, on July 1, 1921, Army Field Clerk John K. Smyth delivered a letter containing \$100 in United States currency to M. Marcel Michel, then acting as superintendent of Army post office No. 944, Antwerp, Belgium, and obtained a registry receipt therefor. The letter was addressed to the First Savings Bank of Oakland, Oakland, Calif. On August 13, 1921, claimant registered at the same post office and in the same manner another letter containing \$200 in United States currency and holds a receipt for the same.

On October 10, 1921, Warrant Officer Edward K. Powell delivered a letter containing \$20 in United States currency to Army post office No. 944, Antwerp, Belgium, and obtained a receipt (No. 590). This letter was addressed to the Knabe Warerooms (Inc.), 1330 G Street N.W., Washington, D. C. On November 4, 1921, and December 7, 1921, claimant registered at the same post office, addressed to the same firm, two other letters each containing \$20 in United States currency, and holds receipts Nos. 642 and 727, respectively, for such letters.

In respect to the letter sent July 1, 1921, by Army Field Clerk Smyth, the copy of registry bill No. 56 retained at the Army post office at Antwerp, dated July 4, 1921, listing registry mail dispatched from that office, shows on line 9 an item—No. 426—"from A. P. O. 944 to Oakland, California." This registry bill is signed "M. Michel." The copy of this registry bill, signed by M. Michel, filed at the New York post office, does not show any entry of item 426, and lines 8 and 9 on that bill are blank. Registry bill No. 57 retained at the Antwerp post office, dated July 7, 1921, shows an erasure of an item which appears to be "No. 426" on line 7, to Oakland, Calif. On the copy of that bill filed in the New York post office there is no such entry. The copy of registry bill No. 69, retained at the Army post office at Antwerp, dated September 1, 1921, shows an item—No. 525—on line 9 "from A. P. O. 944 to Oakland, California." The copy of that registry bill received at the New York post office shows no such entry but an entirely different item—No. 378, to Helvey, Nebr. These registry bills are signed "M. Michel." The First Savings Bank of Oakland, Oakland, Calif., by affidavit of its cashier, dated September 29, 1922, declared that the remittances in question were never received by the bank.

In respect to the registered letters sent by Warrant Officer Powell, the matter was investigated by the chief post-office inspector, Washington, D. C., and the postal officer, American forces in Germany. This investigation showed that the three registered letters containing currency mailed by claimant on October 10, November 4, and December 7, 1921, were not forwarded by the Army post office at Antwerp nor received by the post office at New York or Washington or by the addressee.

These claims were investigated by a board of officers appointed by paragraph 3, Special Orders, No. 216, headquarters American forces in Germany, Coblenz, Germany, dated October 30, 1922. The findings and recommendation of the board of officers read, in part, as follows:

"The board reexamined carefully all documentary evidence in the case, and in addition received the expert testimony of Mr. W. B. Wisely, postal agent of Army post office 927. He was sworn and testified concerning the method of sending shipments of registered mail to the United States, how the articles are listed, and the steps taken to insure the arrival at their destination of all articles sent.

"After carefully considering and weighing all evidence in the case it is the opinion of the board that M. Michel is liable for the loss of the letters containing \$300 mailed by A. F. C. John K. Smyth at Army post office 944, Antwerp, Belgium.



"The board recommends that in so much as there is another claim on file against M. Michel by W. O. Edward K. Powell, alleging the loss under similar circumstances of \$60, that the amount of pay due M. Michel be prorated between the two claims. The amount of pay due is \$300, and it is recommended that A. F. C. Smyth be given \$250 of this sum, and that the remaining \$50 be held until such time as W. O. Powell has established a just claim to it, when it will be turned over to him. In the event that W. O. Powell does not furnish sufficient evidence that M. Michel was responsible for the loss of his money, this \$50 to be paid to A. F. C. Smyth.

The recommendations of the board of officers, however, could not be put into effect for the reason that, while the salary due Marcel Michel for the months of May and June, 1922, for services as an employee of the Quartermaster Corps in the Army post office at Antwerp, amounting to \$300, has been withheld from payment to him to date, there was no legal authority to pay this sum to claimants in satisfaction of their claims, nor is there authority or an available appropriation for payment of the claims by the War Department. The amount of the claims could not be assessed against Marcel Michel's pay under the one hundred and fifth article of war for the reason that this employee was not subject to military law, having been separated from service prior to the time that the facts were established. It is held, also, that the claims may not be certified to Congress as legal claims for payment out of appropriations that may be made by Congress therefor, under the act approved December 28, 1922 (42 Stat. 1066), authorizing the heads of departments to consider, ascertain, adjust, and determine any claim accruing after April 6, 1917, on account of damages to or loss of private property, not in excess of \$1,000, caused by the negligence of any officer or employee of the Government acting within the scope of his employment—this for the reason that, while Michel, acting in his official capacity as superintendent of the Army post office at Antwerp, received the letters and failed to properly account for them, the receipt of such registered letters by an employee of the War Department and his failure to account for them can not properly be said to constitute negligence on his part within the scope of his employment. However, the facts disclosed tend to show that Michel wrongfully converted the contents of the registered letters to his own use, and, if so, this constituted a criminal act for which the Government is not responsible.

These claims for the loss of these registered letters may not properly be settled by the Post Office Department, as it has not been shown that the registered letters in question ever reached the New York post office or came under control of the Post Office Department. There is, therefore, no responsibility in the matter on that department. In this connection it is remarked that from June 1, 1918, under arrangements made between the War and Post Office Departments, responsibility for delivery and handling of mail, including all incoming and outgoing registered mail, for the American Expeditionary Forces was assumed by the Director Military Postal Express Service. Mail originating in the American Expeditionary Forces for registry, after stamps had been affixed, were forwarded to the civil post office at ports of embarkation. This arrangement was continued in effect for the army of occupation in Germany.

Notwithstanding the criminal phase of this matter it is recommended that appropriation be made to pay the claims in view of the fact that Marcel Michel was an agent of the Government, duly designated to receive registered and other mail matter on behalf of the Government, and it is, therefore, considered that claimants should not equitably be required to sustain the loss of their property on account of the wrongful acts of this employee. Should this appropriation be made, the amounts paid to claimants may properly be set off in part as proper claims of the Government against the \$300 due from the United States as salary for May and June, 1922, to Marcel Michel.

The fifth item, \$10.25 refund to Alexandre Honeveux, Bellac (Haute-Vienne), France, or so much thereof as might be required to purchase exchange not to exceed the amount of 205 French francs, arises incident to the performance of a verbal agreement entered into between the commanding officer, remount annex at Bellac (Haute-Vienne), France, and Alexandre Honeveux, a butcher resident of Rue Thiers, Bellac (Haute-Vienne), France, under which the carcasses of animals dying at the remount annex were delivered to the contractor for removal of the hides and disposal of the carcasses, at a price of 15 francs each to be paid to the American remount authorities. The butcher, Honeveux, in turn, delivered the hides to M. Arbellot-Denouie, tanner and collector of hides for the French Army Intendance, Twelfth Region. Under French regulations the French Government paid the sum of 20, 23, and 25 francs per hide, according to quality.

The payments by the French Government, however, were not made to the butcher direct, but to the commanding officer, remount annex at Bellac, on French Government vouchers. The money thus received was delivered to the butcher, Honeveux, by the commanding officer. The amount of the final payment by the French Government, 205 francs for 10 hides turned over to the collector by the butcher, Honeveux, was delivered by M. Arbellot-Denouic on August 4, 1918, to Lieut. M. S. Sheib, One Hundred and Sixteenth Ammunition Train. The funds thus collected, which should have been in turn delivered to the claimant, were not paid to him but were turned in to the quartermaster and later deposited to the credit of the Treasurer of the United States. The claimant, previous to the payment through the collector of hides of the 205 francs involved in this claim, had paid to the remount authorities at Bellac all sums due for the carcasses of animals delivered to him, as required by his contract. This sum of 205 francs, therefore, is equitably due the claimant and should be refunded accordingly.

The claim was not presented to the General Accounting Office for settlement for the reason that the proceeds of sales in this instance were required to be covered into the Treasury as miscellaneous receipts, and that office is without authority to withdraw funds so deposited in the Treasury for refund to this claimant in the absence of a specific appropriation by Congress for the purpose. (MS. Dec. Comp. Gen. Sept. 12, 1922.)

This claim is established in French francs. Owing to the fluctuation in the rate of exchange the sum due, 205 francs, has been converted at \$0.05 to the franc, a rate higher than the current rate. Only the sum properly due in French francs, as provided in the inclosed draft of bill, may be paid.

Maj. John Mather, or other witnesses familiar with the facts, now on duty in the disposal branch, office of the Assistant Secretary of War, will furnish any further information desired in respect to these claims.

This matter has been submitted to the Director of the Bureau of the Budget, who advises that it is not in conflict with the financial program of the President.

Respectfully,

DWIGHT F. DAVIS, *Secretary of War.*